IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 292 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHREYAS BAZAR CO-OPERATIVE CREDIT SOC. LTD.

Versus

SHASHIKANT CHHOTABHAI PATEL

Appearance:

MR MURALI N DEVNANI for Petitioner

MR AJ SHASTRI for Respondent No. 1

MR BY MANKAD APP for Respondent No. 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/12/2000

ORAL JUDGEMENT

Original complainant of Criminal Case No.36 of 1998, has by filing this Criminal Revision Application under Sec. 397 of the Criminal Procedure Code, 1973 (for short " the Cr.P.C.), challenged the legality,

correctness and propriety of order dt. 27th February, 1998 passed below Ex.1 of Criminal Case No. 36 of 1998.

2. In this Criminal Revision Application, revision opponent no.1 was the accused in aforesaid criminal case.

3. The facts leading to this present Criminal Revision Application, in a nut shell, are as follows:

On or about 31/1/1998, complainant lodged his private complaint against the accused in the Court of the learned Judicial Magistrate, First Class, Dakor (for short " the learned Magistrate") for offence punishable under Sec. 138 of Negotiable Instruments Act and also under Sec. 420 of the Indian Penal Code. As per the case of the complainant, on or about 21/11/1997, accused gave one cheque of Rs.25,000/- drawn on Kheda District Central Co-operative Bank Ltd. Balasinor. That cheque was presented for realisation in the Bank by the complainant. That cheque was bounced with an endorsement "accounts closed". Thereafter, complainant gave notice dt. 16/12/1997. It was received by accused on 18/12/1997. As accused failed to comply with the notice, the complainant lodged aforesaid private complaint in the Court of the learned Magistrate. It appears from the record that instead of taking cognizance of offence under Sec.204 of Cr.P.C., the learned Magistrate held an inquiry under Sec.202 of Cr.P.C. In support of his complaint, the complainant has examined himself as a witness on 2/2/1998. Thereafter, the learned advocate for the complainant advanced his arguments, and when it was found that the complainant has not produced a memo of the Bank under which an intimation was given to the complainant, that cheque has been bound on the ground of account closed. The complainant did not produce that memo of the Bank received from the Bank. An opportunity appears to have been given by order dt. 18/12/1998 to file an affidavit as to whether the complainant was intending to examine any conversant officer of the Bank. It appears that inspite of this opportunity was given to the complainant, the complainant did not file an affidavit as per directions given in the order dt. 18/2/1998 of the learned Magistrate. Thus from the record, it appears that there is no evidence produced by the complainant to show that the cheque was bounced on the ground whichis stated as "accounts closed". Except this, there is no other evidence of the complainant. Looking to the ingredients of Sec. 138 of Negotiable Instruments Act, it is necessary to prove that cheque has been returned by the Bank unpaid either because of the amount of money standing to the credit in that account is

insufficient to honour the cheque, or that it exceeds the amount as arranged to be paid from that account by an agreement with the Bank. The complainant has not come with that case which is required to be proved as per Sec.138 of Negotiable Instruments Act. He has come with the case that he received memo of the Bank with the endorsement of the Bank "account closed". In view of this, it was necessary for the complainant to produce the memo before the Court. In view of this, the learned Magistrate, after discussing the evidence as well as law, has come to a conclusion that there is no sufficient reason to proceed further, and therefore, he dismissed the said complaint lodged by the complainant under Sec.203 of Cr.P.C. As against that order, the complainant has filed this present Criminal Revision Application.

4. I have heard Shri M.N.Devnani, the learned advocate for the revision petitioner, Mr. A.J.Shastri, the learned advocate for the revision opponent no.1 and Shri B.Y.Mankad, learned APP for the revision opponent -2 State.

5. From the order which is challenged in this Criminal Revision Application, it is crystal clear that because the complainant failed to produce the memo of the Bank which is important piece of document to attract the ingredients of offence under Sec. 138 of Negotiable Instruments Act, the learned Magistrate has rightly dismissed the complaint under Sec.203 of Cr.P.C.

6. In view of the above, I see no other reason to come a different conclusion. The order appears to be quite legal, proper and correct. Still however, when it is mentioned in complaint of the complainant that memo is not traceable, and therefore, it is not produced. It appears from the record that in evidence of the complainant recorded, during the course of inquiry, the complainant deposed in Para 7 of his deposition that Dakor Branch of the Bank had given memo to the complainant society on 2/12/1997, but that memo is not traceable, and therefore, it is not produced.

7. Shri Devnani has submitted that looking to this fact complainant be permitted to file a fresh complaint on the same facts and circumstances of the case, as and when that Memo is traced out by the complainant.

8. In view of what is stated hereinabove, this Criminal Revision Application is devoid of merits and the same is required to be dismissed. Rule is discharged.

9. Still however, at the request of Mr. Devnani, some liberty can be given to the complainant to the extent stated hereinbelow:

The complainant is at liberty to file a fresh complaint, if law permits, on the same facts and circumstances of the case as and when the Memo of the Bank in question is traced out by the complainant, subject to question of limitation which is kept open for the accused.

Date: 05-12-2000. (H.H.MEHTA,J.)
ccshah